
Business & Financial Services Committee

HB 2185

Brief Description: Concerning deposit and investment provisions for the prearrangement trust funds of cemetery authorities.

Sponsors: Representatives Stanford and Rivers.

Brief Summary of Bill

- Modifies the types of financial institutions in which cemetery authorities and funeral establishments may deposit prearrangement trust funds.
- Broadens the types of investments in which prearrangement trust moneys may be invested.
- Applies the prudent investor rule to prearrangement trust funds.

Hearing Date: 1/10/12

Staff: Alexa Silver (786-7190).

Background:

Funeral and Cemetery Board.

The Department of Licensing (Department) and its Funeral and Cemetery Board (Board) are responsible for issuing certificates of authority to cemetery authorities, licensing funeral establishments, examining and auditing prearrangement trust fund records, and enforcing laws related to the funeral and cemetery industry.

Prearrangement Contracts and Trust Funds.

A prearrangement contract is a contract for the purchase of cemetery or funeral merchandise or services or an undeveloped grave to be provided at a future date. To enter into prearrangement contracts, a funeral establishment must obtain a certificate of registration and a cemetery authority must obtain a prearrangement sales license from the Board.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Cemetery authorities and funeral establishments that enter into prearrangement contracts must maintain a prearrangement trust fund for the benefit of contract beneficiaries. Funeral establishments may join together in a "master trust fund." For each prearrangement contract, a funeral establishment must deposit at least 90 percent of the contract price in the trust fund, and a cemetery authority must deposit 50 percent of the contract price.

Cemetery authorities and funeral establishments must file a financial report regarding the prearrangement trust fund with the Board on an annual basis. The Board examines prearrangement trust funds at least once every three years.

Authorized Depositories and Investments.

Cemetery authorities must deposit prearrangement trust funds in a public depository or in a state- or federally-chartered credit union or invest them in instruments issued or insured by the federal government. The account must be designated as the "prearrangement trust fund" of the cemetery authority for the benefit of the contract beneficiaries.

Funeral establishments must deposit prearrangement funeral service trust moneys in an insured account in a public depository or in a state- or federally-chartered credit union or invest them in instruments issued or insured by the federal government. The account or investments must be designated as the "prearrangement funeral service trust" of the funeral establishment for the benefit of the contract beneficiaries. The prearrangement trust may not be considered or used as an asset.

Prearrangement trust funds may not be used for the benefit of the cemetery authority or funeral establishment or their officers or employees.

Prudent Investor Rule.

Washington's prudent investor rule requires a fiduciary investing property for the benefit of another to exercise the judgment and care under the circumstances that persons of prudence, discretion, and intelligence exercise in the management of their own affairs. The fiduciary must apply the total asset management approach, taking into consideration certain factors specified in statute. Within these limits, a fiduciary is authorized to acquire every kind of property and investment that persons of prudence, discretion, and intelligence acquire for themselves.

Summary of Bill:

Prearrangement trust funds for cemetery authorities must be deposited in a public depository, a national or state-chartered financial institution authorized to do business in Washington, or a state- or federally-chartered credit union. Prearranged cemetery merchandise or service trust moneys must be invested in accordance with the prudent investor rule, subject to the following restrictions:

- no officer, director, trustee, or relative of an officer, director, or trustee may borrow the funds;
- no funds may be loaned to the cemetery authority or its agents or employees;
- no funds may be invested with people or business entities operating in a business field directly related to cemeteries; and
- funds may be invested in any federal- or state-chartered commercial bank, mutual savings bank, or savings and loan association.

Prearrangement funeral service trust moneys must be deposited in a public depository or invested in accordance with the prudent investor rule, subject to the following restrictions:

- no officer, director, trustee, or relative of an officer, director, or trustee may borrow the funds;
- no funds may be loaned to the funeral authority or its agents or employees;
- no funds may be invested with people or business entities operating in a business field directly related to funeral homes; and
- funds may be invested in any federal- or state-chartered commercial bank, mutual savings bank, or savings and loan association.

The requirement regarding the naming of the trust for funeral establishments is deleted, as is language providing that the prearrangement funeral service trust may not be considered or used as an asset.

Appropriation: None.

Fiscal Note: Requested on January 4, 2011.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.